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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,297	07/06/2006	Michel Guinet	GUINET 1	9728
1444 7590 01/13/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
MCCLLOUD, RENATA D				
ART UNIT		PAPER NUMBER		
2837				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/585,297

**Applicant(s)**

GUINET ET AL.

**Examiner**

RENATA MCCLOUD

**Art Unit**

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano et al (US20040119431) in view of Marusarz (US 20030128003)

Claim 1: Kawano et al teach an electric household appliance, having an electric motor (103) able to drive a rotary tool at a variable speed (par. 0006-0007), a monitoring/control device (109) comprising means to cause the motor to operate according to at least a first operating mode and a second operating mode (par 0009), means to evaluate the load or the resistive torque applied to the motor (par 0013, 0023,0034), and means for automatically switching the operation of the appliance from the first operating mode to the second operating mode when said load passes below a first predetermined threshold (par. 0013-0016, 0026), and in which, when the load passes from a value higher than the first threshold to a value lower than the first threshold, the speed of operation of the appliance decreases (par. 0013-0016, 0029, 0036), characterized in that the monitoring/control device also comprises means to automatically switch the operation of the appliance from the second operating mode to the first operating mode when said load again passes above a second predetermined threshold, and in that when the load passes from a value lower than the second threshold a value higher than the second threshold, the speed of operation of the appliance increases (par. 0026-0029, 0036). They do not teach the appliance for food preparation. Marusarz teaches an appliance for food preparation (par. 0011) It would have been obvious to one having ordinary skill in the art at the

time the invention was made to modify the apparatus of Kawano et al to be used in a small household appliance as taught by Marusz in order to drive the motor.

Claim 2: Kawano et al and Marusz teach the limitations of claim 1. Referring to claim 2, Kawano et al teach when the load passes from a value higher than the first threshold to a value lower than the first threshold the speed of operation of the appliance decreases (par. 0026). They do not teach the percentages. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Kawano et al and Marusz to reduce the speed by different percentages since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art (see MPEP 2144.05)

Claim 3: Kawano et al and Marusz teach the limitations of claim 1. Referring to claim 3, Kawano et al teach when the load passes from a value lower than the second threshold (SH) to a value higher than the second threshold (SH), the speed of operation of the appliance increases (par. 0004-005). They do not teach the percentages. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Kawano et al and Marusz to reduce the speed by different percentages since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art (see MPEP 2144.05)

Claim 4: Kawano et al teach the predetermined load thresholds for the automatic reduction (SB) and/or increase (SH) of the speed of the motor, depend on the initial speed value.(par. 0023,0025).

Claim 5: Kawano et al teach that the predetermined thresholds are identical for the reduction and automatic increase of the speed (par. 004-005).

Claim 6: Kawano et al teach means to additionally decrease the speed when the load remains below the predetermined threshold for the reduction of the speed for a predetermined length of time (par. 0004)

Claim 7: Kawano et al teach the assigned speed after reduction is a function of the measured value of the load (par. 004).

Claim 8: Kawano et al teach the means to detect the load applied to the motor include means to measure the electrical current consumed by the motor, or the voltage at the terminals of the motor (par 0023).

Claims 10, 11, 12: Kawano et al and Marusz teach the limitations of claim 1. Referring to claims 10-12 Kawano et al teach the speed of the motor is reduced when the load passes below the first predetermined threshold (par. 0032). They do not teach the percentages. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Kawano et al and Marusz to reduce the speed by different percentages since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art (see MPEP 2144.05)

Claim 13: Marusz teaches a universal motor (par. 0011)

Claim 14: Kawano et al teach means to cause the motor to operate according to at least a first operating mode and a second operating mode are operative to switch the motor operation directly between the first and second operating modes (par 0009-0010 high and low speed).

Claim 15: Kawano et al teach the speed of operation of the appliance decreases only when the load passes from the value higher than the first threshold to the value lower than the first threshold and the speed of operation of the appliance increases only when the load passes

from the value lower than the second threshold to the value higher than the second threshold (par. 0013-0016).

3. Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano et al (US20040119431) in view of Marusarz (US 20030128003) as applied to claim 1 above and further in view of Fujisaki et al (US 6211640).

Claim 9: Kawano et al and Marusarz teach the limitation of claim 1. Referring to claim 9, they do not teach means for measuring noise. Fujisaki et al teach a means for measuring noise (col. 8:50-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Kawano et al and Marusarz to measure noise as taught by Fujisaki et al in order to reduce noise.

#### ***Response to Arguments***

4. Applicant's arguments filed 9/4/08 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., excluding a third operating mode) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Also, applicant's claim language does not preclude the existence of a third operating mode. Kawano et al teach a motor controller that switches between low speed mode and high speed mode (par 0009-0010) and therefore reads on the claim limitations.

In response to applicant's argument that it would not be obvious to combine the teachings of the applied references for the simple reason that the operating requirements of an electric power tool, such as the power saw shown in Figure 3 of the reference, are totally different from the operating requirements of the tool of a food preparation appliance, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kawano et al teach a motor speed controller that controls a motor speed depending on a load (par. 0001) for a power tool. Marusarz teaches a motor speed controller for a universal motor that controls a motor speed under various loads (par. 0012) and further recites that the invention may be used in a household appliance (par. 0011) or a power tool (par. 0024). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the references.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RENATA MCCLOUD whose telephone number is (571)272-2069. The examiner can normally be reached on Mon.- Fri. from 5:30 am - 2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Benson can be reached on (571) 272-2800 ext. 37. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Renata McCloud/  
Examiner, Art Unit 2837

/Walter Benson/  
Supervisory Patent Examiner, Art Unit 2837